IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.234 OF 2006
WITH
CIVIL APPLICATION NO.312 OF 2006

Bhaskar Bala Parab. ..Appellant.

V/s.

The Municipal Corpn. of Gr. Bombay & Anr. ..Respondents.

Ms.Geeta Shashtri i/b Khilnani & Co. for appellant.

Mr.Malandkar for BMC.

Mr.K.B.Kedia for respondent No.2.

CORAM: A.M.KHANWILKAR,J

DATE : APRIL 5, 2006.

P.C. :

1. Heard counsel for the parties. Perused the material which are placed on record.

2. I have no hesitation in accepting the conclusion reached by the trial court that the appellant/plaintiff has not approached the court with clean hands. The fact that the appellant had filed Suit No.5468 of 1995 is suppressed in the present suit.

3. To get over this position, counsel for the appellant would contend that the previous suit

pertains to some other structure and not the suit structure.

4. Only to reassure myself as to whether the conclusion reached by the trial court is correct or not, I have examined the copy of the plaint in the previous Suit No. 5468 of 1995. Suffice it to observe that the opening paragraphs in both the suits, in particular, the description of the structure provided therein is identical and verbatim. If it is so, the argument of the appellant that the present suit pertains to some other structure is unacceptable. The court below has rightly rejected the said contention. It is common ground that the structure referred in the previous Suit No.5458 of 1995 has been removed from the site where it stood. According to the Corporation, the same has been demolished by the Corporation pursuant to action in terms of Notice under section 351 of the Act dated 16th August, 1995. According to the appellant, however, the structure has been removed from the site by the appellant. Accepting any stand either of respondent or appellant, the fact remains that the structure in question was removed soon after 1995. If it is so, the structure could not have been re-erected without prior permission of the

Corporation. No such permission is forthcoming. Even on this reasoning the conclusion reached by the trial court will have to be accepted. The documents which are pressed into service on behalf of the appellant were also relied while defending the action taken by the Corporation under previous notice dated 16th August, 1995. There is no additional document pressed into service on behalf of the appellant.

5. The argument of the appellant that the suit structure stands on the area which is declared as Slum Area also cannot be accepted because no declaration under the Slum Act has been produced before the court. Reliance is placed on the communication sent by the Assistant Engineer(B & F) D-Ward dated 17th February, 2004 addressed to the Respondent No.2. That indeed mentions that the adjoining plot to Rewa Building is declared as slum area. However, there is no evidence to substantiate the position that the structure in question is standing on the adjoining plot, which is declared as slum area.

6. Taking over all view of the matter, there is no substance in this appeal. The same is devoid of merit. In fact, I am in agreement with the view

taken by the court below that the present suit is an abuse of process of law. Hence, appeal as well as civil application are dismissed.